

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of:	)	
	)	
KM Television of El Dorado, L.L.C.	)	
	)	CSR-6264-M
v.	)	
	)	
Cable One, Inc.	)	
	)	
Request for Mandatory Carriage of	)	
Television Station KEJB(TV),	)	
El Dorado, Arkansas	)	
	)	

**MEMORANDUM OPINION AND ORDER**

**Adopted: May 10, 2004**

**Released: May 13, 2004**

By the Deputy Chief, Policy Division, Media Bureau:

**I. INTRODUCTION**

1. KM Television of El Dorado, L.L.C. ("KM"), licensee of television broadcast station KEJB(TV), Channel 43, El Dorado, Arkansas ("KEJB" or the "Station") filed the above-captioned must carry complaint against Cable One, Inc. ("Cable One"), for failing to carry the signal of KEJB on its cable system serving the community of Vidalia, Concordia County, Louisiana.<sup>1</sup> Cable One filed an opposition to which KM replied.

**II. BACKGROUND**

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.<sup>2</sup> A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.<sup>3</sup> A DMA is a geographic market designation that defines each television market exclusive of

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<sup>1</sup> Complaint at 1.

<sup>2</sup> 8 FCC Rcd 2965, 2976-2977 (1993).

<sup>3</sup> Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.<sup>4</sup> One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.<sup>5</sup> For UHF commercial television stations, the standard used to determine what constitutes a good quality signal at a cable system's headend is -45 dBm.<sup>6</sup> Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.<sup>7</sup>

### III. DISCUSSION

4. In support of its complaint, KEJB states that it is a full-power television station currently operating under program test authority and licensed to El Dorado, Arkansas, which is in the Monroe, Louisiana – El Dorado, Arkansas DMA.<sup>8</sup> It states further that Cable One operates a cable television system that is also in the Monroe, Louisiana – El Dorado, Arkansas DMA.<sup>9</sup> KEJB asserts that on October 2, 2003, it formally requested mandatory carriage of its signal on Cable One's cable system serving Vidalia, Louisiana.<sup>10</sup> KEJB states that on October 20, 2003 Cable One responded indicating that it had tested KEJB's off-air signal on Channel 43, but that it "could not detect a signal of adequate strength for carriage."<sup>11</sup> KEJB asserts that Cable One failed to comply with the Commission's rules when it did not provide any evidence of the test results or identified the headend where the tests were conducted.<sup>12</sup> KEJB states that it is filing the instant complaint within 60 days after Cable One's October 20, 2003 letter.<sup>13</sup> KEJB asserts that it is committed to deliver, at its own expense, a good quality signal to Cable One's principal headend.<sup>14</sup>

5. In opposition, Cable One asserts that KEJB does not qualify for mandatory carriage on its Vidalia, Louisiana cable system because KEJB fails to deliver a good quality signal to that headend due to various technical problems.<sup>15</sup> According to Cable One, it has told KEJB that if it can provide the Vidalia

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<sup>4</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>5</sup> 47 C.F.R. § 76.55(c)(3).

<sup>6</sup> 47 U.S.C. § 534(h)(1)(B)(iii); 47 C.F.R. § 76.55(c)(3).

<sup>7</sup> *Must Carry Order*, 8 FCC Rcd at 2991.

<sup>8</sup> Complaint at 2.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 3 and Exhibit B.

<sup>11</sup> *Id.* and Exhibit C.

<sup>12</sup> *Id.* at 4.

<sup>13</sup> *Id.*; see 47 C.F.R. § 76.61(a)(5)(i).

<sup>14</sup> Complaint at 4-5; see 47 C.F.R. § 76.55(c)(3).

<sup>15</sup> Opposition at 1.

system with a good quality signal, Cable One will carry the Station on that system.<sup>16</sup> Cable One asks the Commission to admonish KEJB because it filed a frivolous complaint knowing that it is unable to deliver a good quality signal to the system in question and is seeking a “redundant declaratory ruling” that will do no more than repeat what the Commission’s rules “already provide, *i.e.* that only if a station demonstrates that it can deliver a good quality signal to a system’s principal headend co-located in the same DMA will it be entitled to carriage on the system.”<sup>17</sup> To support its assertion that KEJB’s signal is deficient, Cable One submitted a copy of the signal strength test it conducted on January 16, 2003, which show readings between -92.75 dBm and -91.75 dBm.<sup>18</sup> Cable One maintains that the Commission should dismiss or deny KEJB’s complaint and contends in a footnote that KEJB’s complaint is premature because its October 2, 2003 letter was “clearly and expressly” a must carry election letter only.<sup>19</sup>

6. In its Reply, KEJB contends that Cable One’s January 16, 2003 test results are unreliable because on that date, the Station was operating temporarily at reduced power.<sup>20</sup> KEJB contends that Cable One’s argument that the Station’s complaint is premature is incorrect because Cable One’s October 20, 2003 response denying carriage of KEJB was an “affirmative action” which triggered the 60-day deadline for KEJB to file a mandatory carriage complaint.<sup>21</sup> In support, KEJB cites *Ranchos Palos Verdes Broadcasters, Inc. v. K.E.D.G. Rand District*, where the Commission found that an “informal opposition to carriage” from the cable operator was sufficient for consideration of a must carry complaint.<sup>22</sup> KEJB reiterates that it is committed to provide a good quality signal to Cable One’s Vidalia headend.<sup>23</sup>

7. Cable One filed a subsequent letter in response to KEJB’s concerns that the January 16, 2003 signal measurements had been taken at a time when KEJB was operating at reduced power. Cable One submitted the results of signal strength tests conducted on February 23, 2004 after the Station returned to full power. The test results show readings between -85.9 dBm and -85.6 dBm ( as adjusted by the Bureau’s technical staff).

8. Cable One argues that KEJB’s complaint is procedurally defective because it is premature as KEJB’s October 2, 2003 letter was a must carry election letter, not a demand for carriage. We agree. The Commission, however, has accepted election letters as informal demands for carriage in circumstances where, such as in this case, the parties have fully pled their positions. Therefore, in the interests of administrative efficiency, we will decide the merits of this case.

9. We disagree with Cable One’s assertion that KEJB has the burden of proof if it wants to be carried on a cable television system that is located in the same DMA as the Station. As noted above, cable operators – not the broadcaster – have the burden of showing that a commercial station that is

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<sup>16</sup> Opposition at 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 3 and Exhibit A.

<sup>19</sup> *Id.* at 3, n. 9.

<sup>20</sup> Reply at 1-2.

<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> 18 FCC Rcd 7065, 7066 (MB 2003).

<sup>23</sup> Reply at 6.

located in the same television market is not entitled to mandatory carriage.<sup>24</sup> Although Cable One has submitted test results showing that KEJB's signal is below the -45 dBm standard for UHF commercial television stations established by the Commission's rules, the *Must Carry Order* provides that if a station fails to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights if the station, at its own expense, provides a cable operator with specialized equipment to improve the station's signal to an acceptable quality at the cable system's principal headend.<sup>25</sup> KEJB maintains that it is committed to acquire and install all the equipment needed to deliver a good quality signal to Cable One's Vidalia principal headend. In view of the above, we grant KEJB's must carry Complaint conditioned upon KEJB delivering a good quality signal to Cable One's principal headend located in Vidalia, Louisiana.

#### IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by KM Television of El Dorado, L.L.C., licensee of television broadcast station KEJB(TV), El Dorado, Arkansas, against Cable One, Inc. **IS GRANTED**.

11. **IT IS FURTHER ORDERED** that Cable One **SHALL COMMENCE CARRIAGE** of the KEJB(TV) signal on its Vidalia, Louisiana cable system, within sixty (60) days after KEJB delivers a good quality signal to Cable One's Vidalia principal headend.

12. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.<sup>26</sup>

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broeckaert  
Deputy Chief, Policy Division  
Media Bureau

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<sup>24</sup> See *Must Carry Order*, 8 FCC Rcd at 2990.

<sup>25</sup> *Id.* at 2991.

<sup>26</sup> 47 C.F.R. § 0.283.